

# Recent Tenure Reforms in the Sahel:

## Assessment and Suggestions for Redirection

Peter Bloch and Jeremy Foltz



B A S I S

■ Broadening Access and Strengthening Input Market Systems

April 1999

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### **Broadening Access and Strengthening Input Market Systems**

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## EXECUTIVE SUMMARY

This document<sup>1</sup> provides a synthesis of current land tenure reforms in the Sahel during the last decade and investigates how they can lead towards sustainable socioeconomic development. In assessing the current thinking on tenure reform programs a number of important principles of tenure reform are missing, among them an admission of some of the pitfalls of decentralization and an over-concentration on sustainable natural resource management to the potential detriment of distributional equity and agricultural productivity. The logic of creating tenure security is to enable increased investments, conservation, and agricultural intensification, but these increases will only take place when tenure reforms are implementable and enforceable. This suggests that land and natural resource tenure should be reformed in ways that reflect the socioeconomic reality of Sahelian countries rather than some idealized world.

While there is great diversity in tenure reform programs in the Sahel, and some moderate successes, a number of common problems stand out: ambiguous laws, a low level of decentralization in practice, an invalidation of the rights of disadvantaged groups, and a high degree of conflict around the nature and implementation of the reforms. In redirecting current thinking on tenure reform to reflect the reality of the Sahel, the following recommendations are proposed:

- Adaptation to encourage the valuable aspects of customary tenure systems, and discourage the negative ones.
- Enabling rather than prescriptive legislation.
- Dual tenure system with strong guarantees of secure individual tenure for farms and community-based guarantees for common property areas.
- Devolution of natural resource management to local level but provision of mechanisms for enforcement with respect to outsiders (including government).
- Good practice guidelines for agricultural contracts between tenants and landowners and between private sector and individual farmers, as well as for farmer/herder interactions.
- Target women and disadvantaged groups.
- Land market activation for productivity and equity considerations.
- Transparency of institutions and legislation.

Development of tenure systems that respond to the needs of rural areas rather than as an adjunct to urban laws.

<sup>1</sup> This paper, presented at a regional workshop on Tenure, Decentralization and Natural Resource Management in N'djamena, Chad, was written in partial fulfillment of a request by the Inter-State Committee for Drought Relief in the Sahel (CILSS) to the BASIS CRSP.

# 1. INTRODUCTION

Sahelian countries have a diversity of socioeconomic goals they pursue including sustainably managing their natural resources, democratizing their societies, increasing national and individual income, and maintaining an even distribution of incomes and assets. Often mistaken as an end in itself, the reform of their land tenure systems represents one method the countries of the Sahel can use to reach some of these goals. Tenure reforms in theory can provide many of the necessary incentives for sustainable economic development, but it is also necessary to take a broad vision of reform and consider them in the context of an overall governmental program.

This document provides a synthesis of current land tenure reforms in the Sahel during the last decade and investigates how they can lead towards sustainable socioeconomic development. The objective is to assess current tenure reforms and based on that assessment provide suggestions as to how to redirect the focus of tenure reform in the Sahel so that they reach their stated goals. In order to accomplish this we review tenure reforms in the Sahel in light of recent theory on tenure reform as embodied in the 1994 Praia conference sponsored by CILSS and its sister organization the Club Du Sahel. While the Praia conference provides a framework for the analysis of tenure reforms it is also necessary to understand the constraints placed on the reform process by both internal and external forces. These constraints impinge on not only on which laws a government may promulgate, but also on whether a government is able to implement and enforce those same laws. For this reason it is useful to analyze not only the laws governing land tenure relations and natural resource conservation, but also how they are used by the population. From a policy perspective, the best policies for reforming tenure in the Sahel will be those that give the right incentives to land users for a sustainable use of the environment at the same time that the policies are implementable, enforceable, economically efficient, and lead toward equitable growth.

## 2. THE PRAIA CONFERENCE

The 1994 Praia Conference on land tenure and natural resource management in the Sahel concentrated on two major themes: tenure and its relationship to natural resource management; and decentralization of government structures. The conference agenda represented a recognition on the part of researchers, officials and donors in the Sahel that, while small-scale projects had produced some local and limited successes in managing natural resources in a sustainable manner, they had generated little overall impact for the countries as a whole. Larger projects with a more global reach would have to be attempted in order for the impact to extend throughout the country, but the constraint was to be able to manage these larger projects in a way that maintained the successful parts of small-scale local projects. This implied an increasing role for governments, despite a great deal of trepidation among participants as to the government's capabilities in this role. Decentralization was seen as a potential solution which on the one hand provided the flexibility of local participation and decision-making, thereby avoiding many of the previous mistakes governments have made, while giving a national reach to the projects.

The Praia conference subdivided the issues of natural resource management and decentralization into eight primary discussion themes:

- 1) Tenure and Pastoralism
- 2) Tenure and the Private Sector
- 3) Tenure and Common Property Management
- 4) Women and Tenure
- 5) Tenure and Agriculture (originally entitled Soil Fertility)
- 6) Institutions and Legislation
- 7) Decentralization and Primary Education
- 8) Decentralization and Public Health

The general recommendations that cut across sub-themes were:

- open communication on the reform process,
- creating true tenure security, and
- a primary role for local institutions, with a supportive role for the state in helping local institutions.

Much of the discussion at the Praia conference concerned the violent conflicts in along the Senegal River between Senegal and Mauritania, in northern Mali, in Niger, and throughout the continent; all these had land access-related causes, which led to a concern that tenure reforms would ignite further conflicts. Thus it was felt that there should be attempts to develop better methods of conflict resolution before they reached significant proportions. Although few specific solutions were adopted, the Praia Conference was successful in bringing together a diverse group: donors, governments, NGOs, and peasant delegates, and providing a forum to discuss issues.

For the subsequent analysis of the progress of tenure reform since the Praia conference, we maintain the first six of the Praia themes. The decentralization issues of the final two themes are not strongly relevant to tenure reform, so we exclude them. On the other hand, we propose a new theme that did not get sufficient emphasis at Praia:

#### 7) Tenure and Disadvantaged Groups.

Disadvantaged groups, which include ethnic minorities, people of low social status, and youth, have distinct and specific problems in terms of access to natural resources.

For the young, while their access problems are supposedly temporary, a lack of access to land and natural resources can induce urban migration, high rates of unemployment, and, potentially, political unrest. Since the demographics of the Sahel imply that the majority of the population falls into this group, any discussion on land tenure reform must include a specific investigation of how youth will be affected by the reforms.

The disadvantaged groups of society: members of lower caste, ex- captives, and any who are not members of “founding” families, have problems of land access similar to those of youth except they are bound by convention rather than by time. In many cases, the nationalization of land that accompanied decolonization, as for example in Senegal and Guinea, was intended to provide disadvantaged groups with access to land, although in practice it never was able to overcome customary tenure rules. Recent reforms to decentralize the land tenure systems and recognize customary tenure rules threatens to worsen the position of disadvantaged groups in gaining access to land, by recognizing in law the very custom which makes them disadvantaged. Any new tenure reform must take into account the impact on disadvantaged groups’ access to land and natural resources, because ignoring these groups will exacerbate inequality in the Sahel and have detrimental effects on the long-term prospects for a sustainably managed ecosystem.

There are a number of important principles of tenure reform missing from the discussion of Praia, among them an admission of some of the pitfalls of decentralization and an over-concentration on sustainable natural resource management to the potential detriment of distributional equity and agricultural productivity.

## 2.1 DECENTRALIZATION

The recent push for decentralization in the Sahel, while intending to provide quick cures for many of the imperfections of government policy, has a number of difficulties in implementation as well as in overall conception. As Hessling and Ba (1994) note, decentralization is not a panacea for a government’s problems because it is difficult to implement in the face of shrinking government budgets, rigid bureaucracies, and a frequent inability or unwillingness of local communities to take on the responsibilities and decision-making that are to be devolved to them. These difficulties in implementation are demonstrated by the slow pace of true decentralization in the Sahel, even in countries such as Mali where the rhetoric of the government has favored it. Governments have been unwilling to let go of their current power, bureaucrats have been unwilling to give up their positions and local communities have not been treated as reliable partners in decision making by governments.

Many of the problems of implementation in decentralization can be explained by an overly optimistic conception of what decentralization entailed. Decentralization, in a similar manner to the “gestion du terroir



villageois” approach, assumes a unitary rural power structure with a certain amount of uniformity and singularity of purpose of all members of local communities; this ignores the reality of a multi-faceted, multi-ethnic village common in the Sahel. The divergent interests of different villagers can derail decentralization before it gets a real start. In particular, as shown by Niger’s experience (Lund 1995, and Hobbs et al. 1995), disadvantaged groups often have little voice in the village decision-making process, yet it may be these groups which are most responsible for natural resource management.

Decentralization also implies that all of the resource users can be represented on the local level by local village political structures, even though some of the more important resource users will be transhumant populations with their cattle, and/or potentially private sector actors from outside the village. On the one hand villages will need governmental help in enforcing resource management practices in concert with these outside groups, but on the other hand these groups, especially the transhumant population, may need protection or advocacy efforts from the central government to maintain their rights vis-a-vis the local community. For example, the central governments of Sahelian countries have a strong interest in maintaining livestock corridors to get animals to export markets along the coast, but few farming communities have an interest in giving up their land or natural resources to a livestock corridor, even if they themselves have animals to export. This implies four important and often neglected principles in implementing sustainable decentralization of land tenure and natural resource management:

- Governments must make sure that decentralization does not imply a reconcentration of land and natural resource rights in the hands of rural elites to the detriment of women, youth and disadvantaged groups.
- Local communities may need help in enforcing the rules they decide upon locally with outsiders, transhumants and private sector actors, who are not beholden to the local legal system.
- In a decentralized system, there remains a role for the central government in maintaining policies beneficial to the country as a whole, even if they may be detrimental to local communities.
- Decentralization will be a slow process that requires changing attitudes and capabilities at both the government level and the local level.

## **2.2 EQUITY**

Many of the distributional equity questions raised by decentralization and other types of tenure reforms, particularly the adaptation of customary tenure, are not well addressed within the Praia framework, in large part because of Praia’s overriding concern with sustainable natural resource management. Any reform of land tenure, by formalizing customary structures based on an open system with reciprocal obligations between land “owners” and those who work the land, runs the risk of creating new inequalities within rural areas as the reciprocal obligations disappear. For example, validating customary tenure in Senegal and Guinea has given stronger control to rural elites (founding families) and left some disadvantaged groups with less access to land. While land-to-the-tiller programs can lessen the equity problems of formalization of tenure, in many cases it will lead to land borrowers being thrown off the land in anticipation of formaliza-

tion. For example, in Niger the advent of the Rural Code led a number of land owners to evict renters or borrowers from their land in order to preserve their land ownership (Ngaido, 1996). A further potential equity problem of formalization of tenure comes from creating a rule-based system that requires political connections, money, and influence to navigate, thereby allowing more concentration of lands in the hands of the wealthy or influential than might have existed under the previous open system. In order to lessen the distributional problems inherent in any tenure reform process, some basic principles apply:

- All reforms of the tenure system must take adequate account of how they affect the distribution of land holdings. Ideally, they should strive to bring greater equity in the access to land and natural resources to all parts of rural society, though at a minimum they should maintain the distributive status quo.
- Along with reforming tenure, governments should consider mechanisms by which land and the benefits from natural resources can be redistributed more equitably. Among the possibilities include activation of land markets so that land will eventually be used by the most efficient producers; direct redistribution policies; and legal validation of customary reciprocal rights.

## **2.3 PRODUCTIVITY**

The conservation of natural resources necessarily requires the managers of resources to make investments rather than simply exploiting the resources they have in the present. An investment in trees or soil fertility will appear to a farmer as similar to any other agricultural investment they make. While the majority of Sahelian farmers manage to produce enough to survive year to year, under the framework of Reardon and Vosti (1996) most of them fall into the category of the “investment poor” because they survive year to year and do not have the extra funds to make investments to improve their environment. They are instead constrained to make single-year production decisions without the possibility of making decisions for the long-term. Farmers in the Sahel have been notoriously slow to invest in increasing agricultural productivity, so one should pay special attention to the sorts of incentives necessary to promote increased investment. As shown in Chart 1 in the next section and reinforced in empirical investigations from Niger (Gavain and Fafchamps, 1996), tenure security is a necessary though not sufficient condition for increased agricultural investment and efficiency. One of the other necessary conditions is being able to produce a surplus each year which can be invested in future resource conservation or future productivity.

One method to ensure that Sahelian farmers have a surplus to use for resource conserving activities is to increase their agricultural productivity and efficiency. Raising the efficiency of resource use in agriculture by use of new crops, techniques, and technologies will both free up resources to be used for future investment and use fewer natural resource inputs to produce a given output. For example, intensive livestock-raising systems, which are starting to supplant the extensive grazing systems of the past, reduce the pressure on rangeland and provide higher profits to animal owners. In order to ensure that tenure reforms increase productivity and efficiency in a manner that improves natural resource management, some general principles apply:

- Tenure reforms should not have detrimental effects on agricultural productivity even in the name of resource conservation, because they will reduce farmers' ability to invest in natural resource conservation. Lower productivity may also lead to greater inequality of land distribution as farmers who are particularly resource- constrained sell off their land.
- Increasing overall farm productivity can stabilize the use of marginal lands currently in production and allow villagers the wealth to afford to take this land out of production eventually. An increase in productivity on land currently in production will also reduce the incentive for farmers to spread cultivation into marginal lands.
- Raising rural incomes can reduce pressure on natural resources through greater investment and better efficiency of resource use.

### 3. THE LOGIC OF TENURE REFORM

The goals of socioeconomic reforms in Sahelian countries include the sustainability of natural resource management, democratization, increases in people's incomes, and a certain degree of equity in the distribution of incomes and assets. Tenure reforms, as undertaken by these countries, rarely take account of more than one or two of these goals. This can lead to a situation in which success in pursuing one goal may actually worsen progress towards another goal. For example, improved NRM via conservation measures democratically agreed to may reduce the potential for economic growth and/or progress towards equity.

It is therefore preferable to adopt a broad vision of reform in order to understand the relationship among different reform actions, as well as between actions and results. In Chart 1 we present a schematic view of the expected impacts of tenure reform on the principal socioeconomic goals, showing the conditions required in order that the actions lead to desired outcomes. The logic of the chart is that tenure reform actions will increase tenure security, and that increased security will lead to increased participation in a series of activities (investment, conservation, ...) that will help people to achieve their objectives. But there are constraints to be considered, both endogenous and exogenous, that complicate the process and might either negate or divert the impact of reforms; not taking account of the constraints might make the reforms fail. Beyond the constraints, it should be recognized that there are induced feedback effects of reform that might either enhance or diminish the direct effects. For example:

investment, such as tree-planting or house construction, may increase tenure security; land markets may permit people to lose their land through distress sales in cases of temporary misfortune, thus presenting reduced tenure security.

The central, left-to-right flow of the chart is the core argument in favor of tenure reform. Tenure reform actions, including legal, administrative, and procedural actions, are hypothesized to increase security of tenure over land and other natural resources. By enacting legislation, clarifying and recording the rights and responsibilities of rural people, and promoting participatory natural resource management or land use planning, the government is an essential player in this step, because it alone has the legal authority to establish nationwide rules, regulations, and opportunities. The government should use this authority, however, to provide incentives to individuals and communities to take advantage of increased tenure security, rather than to force them to behave in certain ways. In other words, the legislation and institutional framework should be "enabling" rather than "prescriptive;" phrasing of laws and regulations for institutions should permit rather than require individuals and communities to undertake activities that promote sustainable rural development.

The first set of potential impediments to the process are labeled "endogenous constraints" in the chart, because they both have an influence on tenure security and activities enabled by tenure security, and also are influenced by them. The diversity of groups within any Sahelian territory must be recognized: custom and prior legislation have generated wide differences in tenure status among ethnic groups, genders, age groups and social strata. Some aspects of the customary rules about land access serve socially useful purposes, and some serve rather narrow interests of privileged minorities; the same, of course, is true of prior legislation. Income and wealth may be unevenly distributed, either as a function of these groups or independently. Generalized poverty is also a constraint, since poor people may not have the human or

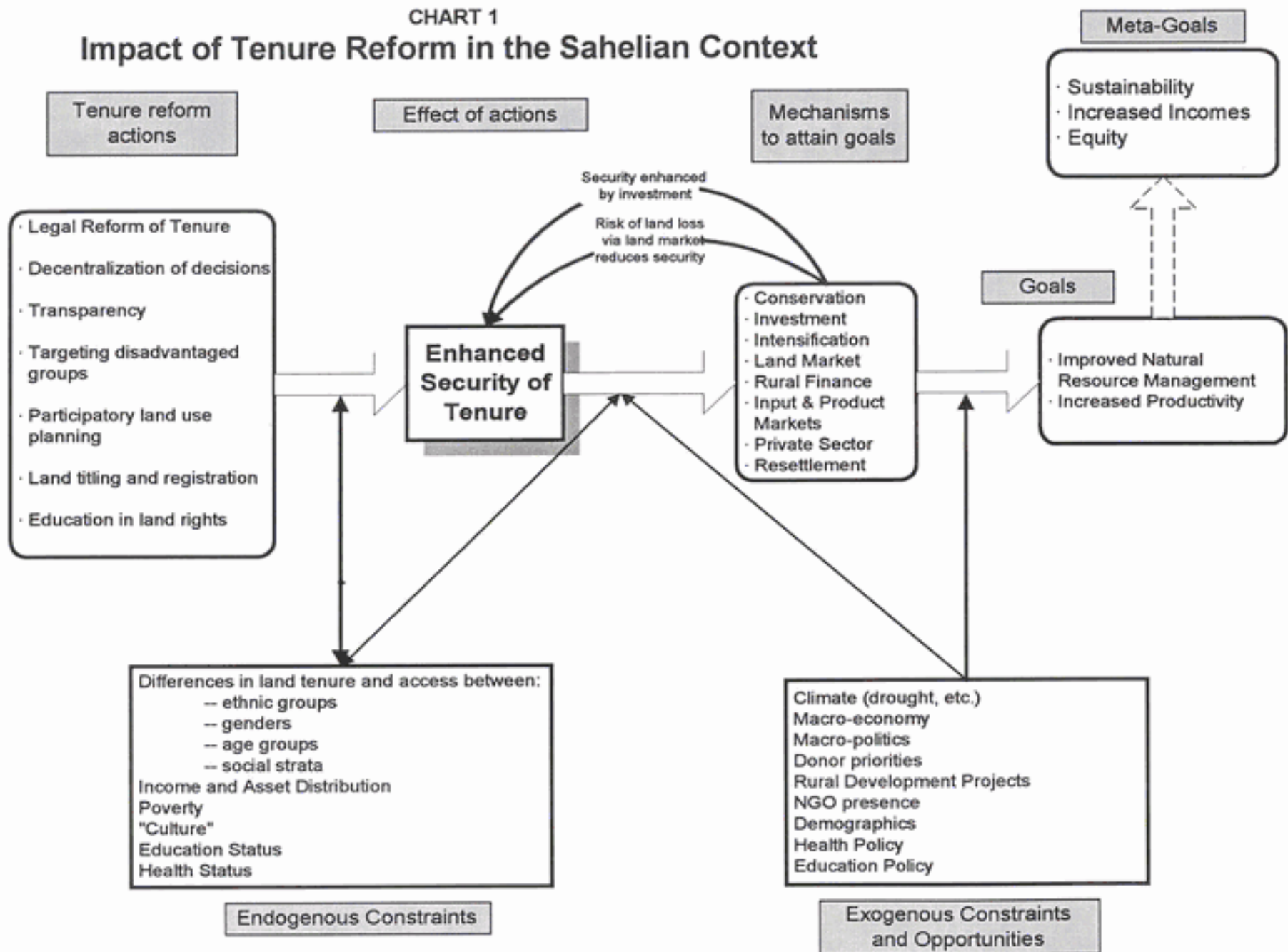
financial resources to take advantage of the opportunities offered by increased tenure security. “Culture,” involving such practices as group solidarity which inhibits individual initiative which is perceived as anti-thetical to group interests, may also negate the benefits of reforms. Finally, people who are uneducated and unhealthy, which is the case for a shamefully large percentage of rural Sahelians, may simply be incapable of responding to opportunities. These endogenous constraints demonstrate that tenure reform, while it may be necessary to achieve the national goals, is far from a sufficient condition for success.

Even if tenure security or its effect on individual and community incentives is not constrained by endogenous constraints, it may be affected by exogenous factors. Climatic factors, especially drought, are of central importance in the Sahel, and could render tenure security meaningless because there are no perceived benefits to investment, conservation, and other activities. The influence of the macro-economy, both global and national, in the form of exchange rates, prices, interest rates, and availability of capital, can be strong in either positive or negative directions. Donor priorities, as expressed through rural development projects and support to NGOs, can also either enhance or constrain the impact of tenure security. Demographic trends, especially population pressures brought on by migration and natural increase, may create external demands for access to land and natural resources. Health and education policies, which have been lamentable in many Sahelian countries to date, could make a big difference in creating human capacity to promote sustainable rural development once tenure reform has made it possible.

All these constraints could render worthless any tenure reform program. This does not, however, suggest that tenure should not be reformed. Rather, it suggests that tenure should be reformed in ways that reflect reality in all its complexity rather than an ideal situation that has never existed and will never exist. The rural Sahel will never consist of homogeneous communities acting with one voice to promote sustainability and equitable economic growth. It will be composed of individuals, families, lineages, and other sociopolitical groupings with sometimes divergent interests. It will never be immune to outside influences as impersonal as prices or as personal as forest police. If the rural Sahel is to be able to share the global experience of improved standards of living, its governments must adopt tenure policies (in fact, all policies) that have a chance of succeeding rather than policies that would succeed in the best of all possible worlds.

If this is done, the linear path from tenure reform actions to achievement of national goals is restored. The improvement of tenure security will enable more coherent conservation efforts, more investment and agricultural intensification, better operation of land markets, a clearer and more likely positive role of the private (e.g. corporate) sector, and fewer problems with resettlement programs. The key word, however, is “enable.” tenure security will not in and of itself make these mechanisms work better, but it will certainly increase the probability that they will do so.

# CHART 1 Impact of Tenure Reform in the Sahelian Context



## 4. COUNTRY PROFILES

In the last decade the countries of the Sahel have presented a diversity of types of tenure reform, stages of the reform process, and methods of implementation, thereby making an overall synthesis inconclusive and too general. While some countries, e.g. Mali and Niger, have opened up a national debate on land tenure and the reform process, others such as Cape Verde have yet to make tenure reform a major political objectives. With such a diversity of experience it makes most sense to review the progress and content of reforms in each country individually. Table 1 synthesizes the recent reforms in each of the countries of the Sahel along the following dimensions: type of reform, the degree to which the reform replaced or adapted customary tenure, the degree of decentralization in the laws and the reform process, whether the reforms targeted women or disadvantaged groups in society, the major constraints to continuation and consolidation of the reform process, and the state of implementation. The accompanying text which follows describes in more specifics the reforms in each country.

### **BURKINA FASO**

Recent moves to reform the land tenure situation in Burkina Faso have both encouraged the individualization of tenure rights through creation of land titles and recognized the importance of customary tenure by trying to validate traditional use rights. The government envisions secure titles as a method of increasing and intensifying agricultural production. The dualistic and somewhat contradictory logic of tenure reforms which recognizes land privatization along with customary tenure has led to a set of ambiguous laws on managing natural resources and created a great deal of uncertainty in the implementation of tenure reforms. Among other constraints is the problem of onchocerciasis which has forced populations out of potentially highly productive river basins. The return of migrants from neighboring Cote d'Ivoire and Ghana has created land scarcity in some parts of Burkina Faso, and has created an increased competition for land which needs to be addressed in future land reforms. The most recent reforms have not specifically addressed the land needs of women, youth, or disadvantaged groups, though the existence of private titles may be able to give them some measure of protection. Recent tenure reforms have not decentralized the administration of land claims, though they have created a village level gestion de terroirs approach to natural resource management. The most recent government has a more centralized political system than that of the previous Sankara government, implying that the near term prospects for decentralization seem limited.

### **CAPE VERDE**

Little research has been done on tenure reform in Cape Verde, in part due to the fact that land tenure questions have not been particularly important to either the government or outside donors. Although Cape Verde has a system of private property which others might look upon with envy, it has one of the more unequal land distributions in the region, with the majority of farmers renting or sharecropping their land from large land holders, or morgados. This leaves the majority of farmers, not owning their land and managing their natural resources, under an uncertain and risky tenure situation.

## **CHAD**

With its decades-long political instability, Chad has not produced much new tenure reform legislation. That which is on the books remains difficult if not impossible to enforce, leaving the customary tenure system as the dominant mode. In the south of the country this leaves a tenure system of traditional village hierarchies where sedentary agriculture dominates, while the north has a pastoral system based primarily on Islamic laws. Despite the political instability, the government did promulgate a new Forest Code in 1989 which confirmed the predominant role of the state. This reform replaced customary tenure rules and institutions rather than adapting them, and it centralized decision-making powers rather than devolving them to local administrations.

## **GAMBIA**

Despite its small size and consequent pressure on land, the Gambia is one of the only countries of the Sahel which had until recently upheld customary land tenure rules and institutions in rural areas. Recent enactment of the State Lands Act of 1990 in urban areas threatens to change the customary status quo, because it replaces the customary tenure system with registration and long term, 99-year state grants of land leases. While currently only in force in the urban areas of Banjul and Kombo St. Mary, the State Lands Act might have devastating effects if it were to be applied to rural areas. The cost of land registration for rural land would be much too expensive in comparison to the potential stimulative investment effects of land tenure security, even with donor financing.

In contrast to other countries making strides in decentralizing land disputes, the Gambia's State Lands Act centralizes the dispute resolution system by replacing the current tribunals at the district level with a ministerial committee. Recent evidence has shown that this centralization and compulsory land registration has diminished the tenure security of Gambian women, because their husbands or fathers end up with registered titles to land over which the women had customary control. A good example of this is the irrigation project at Jahally Pachar in which men gained control of land resources originally destined for women (Hessling and Ba, 1994). The potential for extension of the State Lands Act to rural areas has already led to a significant number of strategic land claims in anticipation of the granting of long-term leases; these have pushed some disadvantaged groups off of borrowed lands. Another major constraint in Gambia's land reform program is the high cost of registration and therefore the concurrent high level of donor financing necessary to extend registration to rural areas.

## **GUINEA-BISSAU**

The land tenure system of Guinea-Bissau is based on a dual system dating from the colonial era: the tabacana system which comprises the vast majority of farm land under a traditional village farming system with customary tenure laws, and the ponta system of commercial farms on government land concessions. There has not as yet been much movement towards reforms in the land tenure system of Guinea-Bissau, though recent moves towards democracy bode well for a decentralization of political power. It seems that current thinking in the government points to a replacement of the customary tenure of the tabacanas with a private property model along the lines of the pontas, but these reforms have stayed at the discussion stage for the moment.



## **MALI**

Since 1991 Mali has had one of the most far-reaching debates on land tenure reform and decentralization, evidenced by the 1993 national convention on land tenure reform which included all sectors of society from farmers to government officials in the debate. While this debate has translated into decentralization of administrative structures under a 1993 administrative decentralization law, neither the debate nor the administrative decentralization has translated into de facto decentralization in land tenure or natural resource administration. The recently enacted 1995 forest code has devolved some state responsibilities to local elected councils, but does not allow local areas to decide their own policies. Although the 1992 constitution officially abolished it, the 1986 Code Dominal et Foncier remains the major land legislation, pending new initiatives. This land legislation recognizes customary tenure, but it emphasizes land registration and does not give a consistent juridical framework to guarantee either land rights or natural resource control at the village level using customary tenure rules. Despite officially encouraging land registration, estimates of the amount of land registered range between 2-3% of cultivable land (Elbow, et al. 1996, p.103). Until now, Malian land legislation has not included specific provisions for women, youth, or disadvantaged groups and continues to consider pastoral land as state lands, with no specific provisions for how pastoralists' use rights might be codified or guaranteed.

## **MAURITANIA**

The recent history of land tenure in Mauritania is one of violent disputes along the Senegal River valley. The 1983/84 land reform had as its goals the reinforcement of the state's role in land control, the abolition of traditional tenure and its individualization, plus the encouragement of private development of land. This effectively validated private land ownership in the Senegal River valley to the detriment of pastoral groups and ethnic minorities who had had customary access to the land, thereby helping to precipitate the ethnic violence of 1989. Land disputes were exacerbated by an overly centralized system of dispute resolution which required judgment at the ministerial level (Leservoisier, 1994). The net effect was to serve the interests of private entrepreneurs who speculated on land and used their administrative connections to guarantee their ownership rights. Given this recent history of centralized land tenure reforms which abolished customary use rights, Mauritania can be said to be far behind its Sahelian neighbors in the tenure reform and decentralization process. Future land reforms should in particular pay attention to the use rights of pastoralists, disadvantaged groups, and women, as well as provide a decentralized system for dispute resolution.

## **NIGER**

Niger has commenced one of the more innovative and sweeping changes in tenure reform and natural resource management of the Sahel. It therefore provides one of the better laboratories to investigate the

potential successes and pitfalls of the tenure reform process. The 1993 Rural Code, which was put together as part of a decentralized planning process and provides de jure recognition of customary tenure as well as allowing group registration of land, is the centerpiece of this reform process. A coup in 1996 halted the tenure reform process and has delayed if not halted the debate and implementation of the 1995 draft of revisions and clarifications to the Rural Code. The reform process has also suffered from a number of problems common to all tenure reform: a low level of human resources to implement the land reform, a heavy dependence on outside donor financing and initiative which disappeared after 1996, and a large number of strategic land claims in advance of the tenure reform process which often created greater land insecurities and inequalities (Ngaido, 1996). Niger's innovative priority rights principle, article 28 of the 1993 rural code (p.6), allows recognition of priority use rights for pastoralists for pasture lands and water points which potentially allows implantation of permanent investments such as trees. As yet Niger's rural code has not specifically addressed women or youth's land rights. Many of the strategic land claims in anticipation of the reform process have been to the detriment of the land rights of disadvantaged groups.

## **SENEGAL**

In its rural council system, Senegal has created one of the more decentralized administrative structures to manage land tenure and enforce regulations. Codified in the National Domain law of 1964, the Rural Council Law of 1972, and amendments to the National Domain law in 1980 and 1986, the rural councils are supposed to be decentralized democratic bodies to administer national and customary laws. The tenure laws recognize customary tenure but do not provide a clear basis for rural councils to decide between customary laws and national domain control, leaving the system arbitrary and ripe for manipulation in favor of the wealthy and the connected. While the national domain law recognizes the rights of women and disadvantaged groups to acquire and own land, the enforcement of customary rules often keeps them from doing so. Also pastoralism is not recognized as a legitimate justification for land. The 1993 Forest code allows individuals, collectives, and communities the right to own trees which they planted, but leaves open the question of ownership of naturally regenerating trees.

**Table 1: Content of Tenure Reforms in the Sahel**

Country	Date of most recent reforms	Type of reform	Replacement or adaptation	Degree of decentralization	Targeted groups	Constraints	State of Implementation
Burkina Faso	1984, 1991	1984: Creation of occupation rights and permanent rights for cash cropping. 1991: Creation of private titles	Creates private land titles, but also validates traditional rights (use, long-term lease, habitation).	Decreasing degree of decentralization with new gov/t. Gestion des terroirs (1986) approach to natural resource management at village level	No specific groups targeted.	-Low Political will - Ambiguous management laws - Resettlement of returnees -Health	Low state of implementation of reforms.
Cap Verde	NA	NA	NA	NA	NA	- High degree of land leasing by peasant farmers. - Land tenure issues not considered important. - Low level of research on land issues.	No new legislation implemented.
Chad	1989	New Forest Code	Replaces customary tenure for trees and wildlife with state control.	None.	NA	-Persistent political unrest. -Fiscal imbalances.	Low state of government control of natural resources

Country	Date of most recent reforms	Type of reform	Replacement or adaptation	Degree of decentralization	Targeted groups	Constraints	State of Implementation
Gambia	1990	State Lands Act	Replaces traditional flexible land borrowing system with long term land leases.	Seeks to create central authorities on land disputes.	Weakens women's control over land by granting it to male registration holders.	<ul style="list-style-type: none"> <li>- Strategic land claims in advance of reforms.</li> <li>- High degree of centralization.</li> <li>- High costs of extending registration to whole country.</li> </ul>	Implemented primarily in Banjul and Kombo St. Mary. Not yet applied to rural areas.
Guinea-Bissau	NA	NA	NA	Recent moves towards democracy	NA	-Diversity of current tenure regimes	In planning stages.
Mali	1986, 1995	1986: Code Dominal et Foncier 1995: Forest code, Wildlife management code	1986 law recognizes customary tenure, but not as a priority over the state.	High level of decentralization in government structures not yet codified in land laws.	Pastoralist land continues as state land. No specific provisions for women or youth.	<ul style="list-style-type: none"> <li>-Recognizing customary tenure.</li> <li>- Validating local control.</li> </ul>	Early stages of debate as antecedent to implementation.
Mauritania	1983/1984	Land Legislation to promote agriculture and irrigation	Replaced customary tenure in the Senegal river valley. Validates state's right to declare land as state domain	Low level of decentralization.	Legislation favors new landholders over pastoralists. No provisions for women or youth.	<ul style="list-style-type: none"> <li>-Violent disputes over land issues (1989).</li> <li>-Centralized planning.</li> <li>- Transboundary tenure disputes with Senegal.</li> </ul>	1984 reform implemented. More reform needed.

Country	Date of most recent reforms	Type of reform	Replacement or adaptation	Degree of decentralization	Targeted groups	Constraints	State of Implementation
Niger	1993	Rural code	Provides de jure recognition of customary tenure regimes.	Moderate degree of decentralization in land law planning. More centralized practice of the laws.	Allows group registration of land. Women's and youth land rights not discussed.	<ul style="list-style-type: none"> <li>- Political disruption (1996 coup).</li> <li>- Heavy dependence on external financing.</li> <li>- Strategic land claims in advance of tenure reforms.</li> </ul>	Rural code implemented. The proposed 1995 draft code postponed.
Senegal	1980, 1993	1980: National domain law 1993: Forest Code	Recognizes customary tenure, but unclear status in relationship to national domain	Laws decentralize decision making to rural councils.	Women's rights to land validated. Pastoralism not considered viable land use.	<ul style="list-style-type: none"> <li>- Manipulation of laws to benefit wealthy.</li> </ul>	Erratic and sometimes discriminatory implementation.
General Content of Reforms				Low level of decentralization in practice.	Most laws have no provisions for women or youth. Some validate pastoralists rights.	<ul style="list-style-type: none"> <li>- Ambiguous laws.</li> <li>- Low political will and high degree of conflict.</li> <li>- Dependence on external financing.</li> </ul>	Low level of implementation of reforms.

## 5. GENERAL ASSESSMENTS AND RECOMMENDATIONS

In assessing the progress of tenure reform in the Sahel we distinguish between *de jure* reforms and the *de facto* situation in the countryside. In most cases these two do not coincide to the degree desired by the governments initiating reforms. Most often what governments write into legislation does not translate directly into changes in rural areas. In particular, as long as people observe the old rules, out of ignorance or misunderstanding of the new rules or resistance to them, none of the potentially positive effects of increased tenure security can accrue to the population. As we have noted elsewhere, legislation alone does not change people's behavior in the absence of people's acceptance of that legislation and appropriate enforcement mechanisms. In most of the Sahel, both acceptance and enforcement mechanisms are lacking. With few exceptions, governments have not made the effort to educate the population about the reforms, or even to involve it in the process of developing them. Except in seemingly arbitrary fashion, they have also been unable to implement the reforms, because of budgetary inadequacy and the self-interest of rent-seeking bureaucrats. This section provides an overall assessment of tenure reform in the region and then develops a number of recommendations for further reforms. The assessment and recommendations are organized into the 7 themes of tenure reform described in a previous section.

### 5.1 INSTITUTIONS AND LEGISLATION

In general the legislation recently enacted in Sahelian countries has been of two types: that intended to formalize a set of customary institutions, and that intended to replace customary tenure institutions with individual, private property. The process of formalizing the informal institutions of the Sahel, as best reflected in Nigerien and Gambian reforms, necessarily involves some simplification and the consequent loss of a great deal of the subtlety and flexibility inherent in a customary system. Often lost in the simplification are the reciprocal obligations of customary tenure, according to which, for example, a landowner may have obligations to support a tenant in a year of poor harvests. New legislation should not only attempt to improve the customary system, but must also recognize that it may supplant some elements of the customary system that serve a valuable purpose in the survival of rural Sahelian society. The other type of reform, represented by the Malian Code Domanial et Foncier, simply denies most aspects of existing tenure systems and therefore is at best irrelevant and at worst counterproductive.

The general assessment of the legislation and institutions of Sahelian tenure reforms of the past decade include the following observations:

- Inadequate attention has been paid to understanding the complexity and dynamism of customary tenure in the context of the current economic and geophysical climate.
- The primary focus of much tenure legislation in the Sahel has been the creation of private property and private land titles. Much of this has been due to an urban bias in the legislation. While urban areas present some of the most pressing tenure problems, the attempt to impose a uniform system may have deleterious effects in rural areas.
- The focus on formal titling and registration programs means that for legislation to be effective it will require enormous financial outlays. This has meant that governments are unable to implement the

reforms due to the inadequacy of their own funds and the uncertainty and conditionality of donor financing.

- Implementation of the legislation has suffered from a lack of transparency which has made it difficult for people to react appropriately to new tenure legislation. This has in some cases added to tenure insecurity, with insiders able to take advantage of outsiders.
- Despite much rhetoric espousing decentralization, most of the recent tenure legislation has in fact strengthened the centralized institutions responsible for land and resource tenure. Furthermore, in some cases decentralization has generated negative impacts on equity and sustainability.

In light of this assessment of tenure reform's effects on institutions and legislation we propose the following recommendations to improve the reform process:

- Tenure reform programs should concentrate on adaptation of local institutions, rather than replacing them with inappropriate new ones. Care should be taken, however, that adaptation remains consistent with national goals, so that, for example, elements of customary tenure that exacerbate inequalities would be discouraged while those that govern a common property resource equitably and sustainably would be encouraged. As part of the adaptation process governments should work to validate local dispute resolution mechanisms. Most land disputes are best understood at the local level, and only when they involve matters of overall national importance should the central government or its local representatives become involved.
- Tenure reform legislation should be enabling rather than prescriptive. In other words, laws should permit individuals and communities to act in a constructive fashion to develop appropriate tenure relations rather than imposing a single model for every situation. Thus individuals wishing to obtain formal land titles would be able to get them and the government would be spared the expense of providing titles to all landowners. Those communities wishing to develop local control of natural resource management could do so, with greater or lesser assistance from the government according to their perceived needs.
- Reforms need to be more transparent. Information on both the implications of reform and the means of dispute resolution must be freely available to all citizens.
- Governments should see decentralization as a means to, among other things, increased tenure security, rather than an end in itself. In cases where decentralization may lead in directions antithetical to tenure security it should be undertaken cautiously.

## **5.2 TENURE AND AGRICULTURE**

In contrast to the side of tenure reform represented by the Praia Declaration, which concentrates on the natural resource management effects of tenure reform, much of the legislation in Sahelian countries has been intended to increase investment in and productivity of land. Most countries are trying to create systems of private property with individual land titles, with the idea that this is a necessary precondition for economic growth. The primary justification behind the creation of private property is that private farms have the correct incentives to increase investment and conserve their natural resource base. While private

property is necessary for individual farms, it has some great disadvantages for the vast areas of the Sahel which are used as common property, for grazing, forestry, water points, and livestock corridors. Formalizing private property for these areas may exacerbate natural resource degradation and actually lower investment as herders move toward other areas. Countries such as Switzerland have shown that sustainable resource management and economic growth are possible under a dual system of private tenure on farms and community tenure on pasture land (Stevenson, 1991).

With the Swiss example in mind we offer the recommendation that Sahelian countries establish a dual tenure system with private farms and community based grazing, water holes, and livestock corridors. As yet the Rural Code of Niger is the only which moves in this direction *de jure*. A vital part of creating a dual tenure system, a process which has begun in many of the Sahelian countries, is to give farmers secure tenure on their farms. Giving secure tenure to farmers raises two vital issues: who gets the land, and how secure is their control of the land. In deciding who gets the land, governments need to weigh the equity impact of “land to the tiller” programs with the validation of (frequently inequitable) customary ownership. Different cases will require different solutions, but one potential combination which we see as promising is to validate customary tenure while simultaneously activating land markets. Active land markets would allow those excluded from ownership under the customary tenure system to purchase or rent for long periods the land they need.

A second concern is whether to give full private property rights to farmers or whether to provide them with long-term use rights or leases from the state. While full private property gives greater security, we believe that the effects on investment from full private property are of second order and not significant enough to warrant choosing one over the other. Leaseholds can potentially involve another layer of bureaucracy which Sahelian governments neither need nor can afford, but they provide the government with somewhat more ability to ensure that local arrangements are broadly consistent with national goals, as well as to provide a mechanism for revenue generation.

### **5.3 PASTORALISM AND TENURE**

Most tenure reforms in the Sahel have taken away rights from pastoralists in their drive to create private property systems. The Rural Code of Niger is the exception, creating a principle of “priority rights” to guarantee herders the right to control the use of land that was traditionally theirs. Under the Rural Code, while grazing land is considered to be common property, herding groups are allowed to use the same mechanisms to establish priority rights that farmers may use to establish exclusive rights, i.e. private property. The effective content of priority rights has not yet been established by implementing regulations or observed experience, however, so that the adequacy of the legal guarantee is as yet unknown.

The neglect of, even hostility toward, herders’ property rights in Sahelian tenure reforms is threatening the economic vitality of an important sector of the economy, which is effectively shut off from security of access to its means of production. This is reinforcing the evolving ethnic demographics of agricultural production in the Sahel, where sedentary agriculturalists are increasingly becoming owners of livestock, and formerly nomadic groups are increasingly engaging in agricultural production.



While pure herders are declining in number throughout the Sahel, we believe that this should be a natural process driven by economics and cultural choices rather than poor public policy. There are many elements of symbiosis between herding communities and their sedentary agricultural brethren. Any tenure reform program should strive to maintain and nurture this symbiosis. Currently the lack of clarity in providing secure livestock corridors to move animals to export markets is creating significant conflict between groups and leads to increases in the cost of marketing and exporting animals and animal products.

In order for the tenure system to contribute to the maintenance of an active and viable pastoralist community, we have the following recommendations:

- Study the applicability of Niger's priority rights principle to the social and ecological realities of every country in the Sahel (including Niger).
- Current rules, which stem from custom but have been codified in many countries, allow herders free access rights to fields after the rainy season crop has been cut; these discourage agroforestry and other types of perennial cultivation. In defense of their interests, farmers have also begun removing crop residues in order to feed their own livestock, thus the manure-for-residues exchange which was the economic basis for the rules has become less prevalent. These rules should be modified to remove the disincentive to long-term crops, and should include incentives to encourage planting of perennial fodder crops. Such a system might result in a new, more productive exchange of manure for tree fodder, recreating the old symbiosis between livestock and agriculture at a new higher productivity equilibrium.
- As the interactions between herders and sedentary agriculturalists evolve with the new tenure reforms, customary rules of interaction may become obsolete so that it becomes vital to establish new guidelines for the interaction between herders and farmers. This may best be accomplished through the development of a set of representative contract provisions which can suggest how they should interact and how disputes can be resolved.

## **5.4 THE PRIVATE SECTOR AND TENURE**

Tenure security is a necessary condition for healthy private sector investment but it is not sufficient. Most of the Sahelian tenure reforms are clearly intended to improve the security of private sector investments, but their ambiguity and uneven enforcement encourage a rent-seeking private sector rather than a competitive one. There is clearly a role to be played by the private sector, especially in sectors exhibiting increasing returns to scale or where direct connections to export markets can make the private sector uniquely competitive. Also, the private sector can bring in the type of foreign investment funds that are so lacking in the Sahel. In order to stimulate private sector investment in a way that remains advantageous to Sahelian countries, governments need to establish transparency in tenure regimes and in the investment approval process. This will reduce transaction costs to investors and make them less beholden to specific members of the government. At the same time, governments should employ independent accountants to verify all contracts with private sector firms. In order to facilitate the interactions of the private sector with individual farmers, Sahelian governments should establish guidelines for contract farming which clearly set out the rights and responsibilities of both parties.

## 5.5 COMMON PROPERTY RESOURCES

State control of common property resources in the Sahel has rendered them de facto open access resources because of the virtual absence of enforcement of laws governing common property. To make matters worse still, what little enforcement takes place has been arbitrary, discriminatory, and motivated by rent-seeking rather than by resource conservation. In much of the Sahel the office of Eaux et Forêts has become a feared body rather than an extension service dedicated to the preservation of the country's natural resources. Recent reforms have made some progress in turning the forest services away from predatory policing and towards extension work; there is, however, still a long way to go in this effort. Governments have also been remiss in not adequately balancing local resource needs with national resource needs. Even where governments have made clear statements of national conservation priorities as protected areas, they have been unable to enforce the protected status against a local population which was not consulted in their creation.

In order to improve the management of common property resources, mere enforcement of current laws will not provide any relief to their degradation. To reduce pressure on common property resources in the context of increasing human and animal populations, it will be necessary to increase the intensity of agricultural and livestock production. An intensified agricultural system, hopefully fostered by a reformed property rights system, would leave more land available for conservation and give greater incentives for farmers and herders to use resources efficiently.

Beyond an intensified agricultural system, a number of interventions directed at the management of common property resources should be encouraged, including:

- continuing the movement towards making the forest service an extension service,
- creating a better balance between state and local interests, and
- developing more participatory means of managing protected areas.

The first requires a long process of restructuring and retraining. The second is best accomplished by devolving forest management to the community level, while ensuring that communities are capable of sustainable management. The structure of many Sahelian communities makes them capable of regulating the common property resources within their own community; the role of the state should include the need to help communities in their dealings with outsiders. For dealing with protected areas, there are several examples that might provide lessons for the Sahel, including the CAMPFIRE program of Zimbabwe, in which people living near protected areas are given tenure to the income streams from fugitive resources.

## 5.6 WOMEN AND TENURE

Since land is the most widely held household asset, reforming tenure so that women gain secure access to land is a propitious approach to helping women to increase their socioeconomic possibilities. Under the customary systems of the Sahel most women gain access to land and natural resources from their husband's family, but they lack secure tenure to that land. Often, as soon as profitable returns can be extracted from a piece of land, men will secure tenure to the land, displacing women. Current tenure reforms in the Sahel

have the potential to aid women in gaining secure tenure, in particular via land titling and registration, which are de jure gender neutral. They provide the possibility of giving women greater and more secure access to land, but the reality has been quite the contrary: as in the well-known case of the Jehaly-Pacharr irrigation scheme in the Gambia, it may make women's tenure less secure. Two of the primary reasons for this are the tradition for men to control all that is formalized or that generates cash, and women's low literacy rates and inexperience in working with bureaucratic structures.

Because of a strong tendency for men to control most formal structures, reforms that attempt to target women run the risk of making them worse off. This risk can be minimized by adapting current customary tenure structures rather than replacing them. Promoting women's literacy and directing extension work towards women can increase their ability to operate within a formalized structure. Finally, governments should explore the possibilities of incorporating joint tenancy provisions—the possibility that husband and wife can be equal co-owners of property—into their Civil Code.

## **5.7 TENURE AND DISADVANTAGED GROUPS**

Tenure legislation cannot be used effectively as social engineering to change the structure of society, at least in the absence of a popular will to support that change; much of the tenure reform in the Sahel has upheld the status quo. Socially disadvantaged groups—“casted” people—often lose in land claims to traditional landowners during the process of tenure reform. In Niger's Rural Code customary ownership of land is recognized as having equal standing with individual private title, while in Guinea the land claims of ex-captives were denied in favor of traditional landowners (Fischer, 1997). Like women and socially disadvantaged groups, most tenure reform ignores the needs of youth. Youth are a temporarily disadvantaged group. But their lack of secure tenure to land reduces their options in rural areas and thereby contributes to urban migration, which may or may not be permanent. This constitutes a “muscle drain” from a sector which requires large amounts of labor at peak periods. Since community resource management needs to respond with an equal voice to all sectors of society, youth and socially disadvantaged group participation and validation is vital to its success.

In order to facilitate the access of youth and socially disadvantaged groups to rural resources, the promotion of active land markets is likely to be the most helpful and least coercive. This would allow youth or other disadvantaged people the chance to buy or rent the land they need. In the absence of a fully effective land market, the state should provide guidelines to balance the rights of owners and tenants in contractual relationships. Finally, reforms should encourage labor-retaining techniques of production and also the accessibility of land to those with energy and labor capacity.

## **5.8 SUMMARY OF RECOMMENDATIONS**

- Adaptation to encourage the valuable aspects of customary tenure systems, and discourage the negative ones.
- Enabling rather than prescriptive legislation.

- Dual tenure system with strong guarantees of secure individual tenure for farms and community-based guarantees for common property areas.
- Devolution of natural resource management to local level but provision of mechanisms for enforcement with respect to outsiders (including government).
- Good practice guidelines for agricultural contracts between tenants and landowners and between private sector and individual farmers, as well as for farmer/herder interactions.
- Target women and disadvantaged groups.
- Land market activation for productivity and equity considerations.
- Transparency of institutions and legislation.
- Development of tenure systems that respond to the needs of rural areas rather than as an adjunct to urban laws.

## **5.9 RECOMMENDATIONS FOR FUTURE RESEARCH**

We find that a number of key issues deserve a specific focus in new research. They are:

- The applicability of Niger's priority rights principle.
- The relative merits of leasehold tenure versus pure property rights in terms of agricultural investment, resource conservation, and administrative costs.
- The development of good practice guidelines for contracting.
- Examples of places where conservation and development have been compatible.

## 6. DISCUSSION THEMES

1. Integration of Development Goals and Natural Resource Management.
  - How can the links between tenure security and investment be optimized?
  - What are the likely consequences of liberalized markets for successful natural resource management?
2. Adaptation of Customary Tenure: What is meant by adaptation of a customary tenure system? How does a government guide the adaptation process so that what happens at the local level is not incompatible with national goals? What parts of customary tenure can be adapted to new economic circumstances and what needs to be replaced?
  - Making tenure legislation enabling rather than prescriptive: allowing the economic actors to choose the level of tenure security they need, rather than prescribing it to them.
  - How can customary tenure rules be adapted to control the tension between decentralization which gives control to local elites and centralized tenure which while more equitable makes for unenforceable laws.
  - How can formalized structures be created which take into account the diversity of situations (social, ecological, institutional, and tenure) in the same ways that customary informal structures do? Can we maintain the benefits of reciprocal obligations of customary tenure in a new formalized structure?
  - Can providing contracting guidelines reduce the potential for conflicts and contribute to better interactions between competing groups over natural resource management?
  - Can adaptation of customary tenure be reconciled with the targeting of disadvantaged groups in society.
3. Micro and Macro Linkages: How to optimize the links between the micro (project, local actions) and macro (national policy, legislation, international community) levels.
  - How can government structures be linked at the micro and macro level in a coherent manner? Can rural apprenticeships provide government officials with the necessary training?
  - How can donor, NGO, and private sector participation be optimized in the tenure reform process?
4. Reform Sequencing: What is the appropriate sequencing to reforms (tenure, decentralization, markets, macro, health and education)? Which of these reforms is best undertaken first? Will reforming tenure prior to engaging in other reforms exacerbate inequalities in society?
  - Can tenure reforms proceed in the absence of political decentralization? Or will political decentralization facilitate the process of tenure reform?
  - What are the potential feedback effects from engaging in tenure reform prior to macro-economic or market reform? Can tenure reform succeed in providing incentives to conserve natural resources on its own?

5. The Pace of Reform: What is the appropriate pace of tenure reforms? Can legislation be enacted in pieces or should it be enacted at one single moment?
  - How can the feedback effects of anticipatory land speculation be minimized as tenure reforms are debated in the national forum?
  - How can the short-run insecurity as land legislation is debated or enacted be confronted in a manner so that it does not overwhelm the potential long-run desirable effects.
6. Transparency: While every one seems in agreement that transparency in the tenure reform process is vital to its success, none of the countries in the region have a transparent process. How can transparency in land allocation decisions be encouraged so that all members of society have an understanding of the process?

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